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Navigating The Lawyers
Professional Liability
Insurance Maze



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Lawyer's Professional Liability Insurance

- WHAT
 - Insurance coverage for "Errors and Omissions"
- WHO
 - Attorneys engaged in the practice of law
- WHEN
 - Acting on behalf of the insured law firm

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Policy Basics

LPL policies:

- Are typically one year in duration
- Are on a "claims made" basis
 - Claim or potential claim must be made against insured and reported to insurer during policy year to be covered
- May contain a retroactive date
 - Date prior to which no acts committed by the insured are covered by this policy

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Policy Basics cont.

- Components:
 - Declarations page-limit of coverage, deductible, premium and retro date
 - Insuring agreement
 - Supplementary payments
 - Definitions
 - Exclusions

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Insuring Agreement

- Typical language:
 - "The Company will pay on behalf of the Insured those sums which the Insured shall become legally obligated to pay as Damages for Claims first made against the Insured and reported to the Company in writing during the Policy Period . . . Based on any act, error, omission, or Personal Injury in the rendering of Professional Services"

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Definitions

- Persons Insured-Typically include past and present attorneys, employees, of counsels and independent contractors
- Damages-Monetary judgment, settlement or award. Typically does not include punitive damages, fines or penalties
- Claim-Demand (written?) for money or services
- Professional Services-Legal services by an Insured in Named Insured's practice as a law firm (may include lobbying, title agent work, arbitrator, mediator, etc.)

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Exclusions

- Dishonest, fraudulent or criminal acts (maybe defense)
- Service as director, officer, or employee of a 3rd party
- Owned entity
- Suits for Fees
- Investment Advice

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Supplementary Payments

- Reimbursement (no deductible) of costs and attorneys fees incurred in connection with the investigation or defense of a proceeding before a state licensing board, peer review committee or governmental regulatory body.
- Typically \$10k for each Insured with a cap of \$25k

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Pertinent Parts of the Policy

- Limits - Eroding or Defense Outside?
- Consent to Settle Clause
- Deductible-Loss only?
- Supplementary Coverage
- Notice and Disclosure-Claims and Potential Claims

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Pertinent Parts of the Policy, cont.

- Negotiated coverage enhancements can include:
- Mutual selection of counsel
- Ability to self-defend up to retention
- Worldwide coverage
- "Knowledge" limited to management committee
- Privacy breach notification reimbursement

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Ways in Which Law Firms Are Underwritten

Area of Practice

Claims History

Risk Management

Retroactive Date

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Area of Practice

- Underwriters do not like dabblers
- Underwriters view certain areas of practice as far more risky than others. Those areas include:
 - Plaintiff Litigation, especially Medical Malpractice, Mass Tort, Class Action
 - Patent
 - Securities
 - Real Estate
 - Collections

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Area of Practice – Test Case

4 firms in the same state:

- 15 attorney labor and employment firm, \$2M per claim, \$25k deductible for \$1k per lawyer
- 18 attorney IP firm, \$1M per claim, \$50k deductible for \$4k per lawyer
- 6 attorney collections firm, \$2M per claim, \$25 for \$6k per lawyer
- One of our national plaintiff firms paid nearly \$20k per lawyer!

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Claims History

- What is the frequency and severity of a firm's claims over the past five years?
- Do claims evidence systemic problems or one time errors?
- What has the firm done to ensure that similar claims will not occur again?
- Does the firm sue for fees?

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Risk Management

- 40% of claims are due to alleged administrative errors (failure to calendar, conflicts of interest, etc.)
- Many claims could be avoided by better intake (engagement letters, client selection)
- As a result, insurers want to ensure that firms have appropriate risk management
- Risk management tools include:
 - Docketing – at least two independent systems
 - Conflict of Interest Checks
 - Engagement/Disengagement/Non-Engagement Letters

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Retroactive Date

- What is the firm's retroactive date?
- Is the firm seeking coverage for career coverage or acts on behalf of the firm?
- How many years have attorneys practiced law, or been employed at the firm?

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Tips for Selecting a Broker

- Select a broker that is knowledgeable about the LPL marketplace
- Select a broker that has access to several LPL markets and negotiating leverage with those markets
- Do not use several brokers to shop
- Provide complete information to the broker, including expiring coverage details (premium, coverage wording, etc.)

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Tips for Selecting a Broker

- Do not fill out a different application for each broker
- Select a broker that can assist with tailoring coverage to your particular firm
- Select a broker that can assist with claims and coverage disputes

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Tips for Selecting an Insurer

- History of Company in Market
- Financial Stability
- Admitted v. Non-admitted
- Scope of Coverage
- Relationship with Broker (Does the broker know the underwriter, claims people, etc.)
- Does the insurer work directly with brokers?

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Application Tips

- Provide complete information in an application
- If a question requires more than a "yes" or "no" answer, answer the question on a separate sheet
- Provide hours billed for part time attorneys (under 1,000 hours or so)
- Provide complete claim information (amounts paid, reserves, allegations, disposition)
- Include info on risk management initiatives

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Miscellaneous Tips

- Do not pay for empty limits (i.e. split limits when there is no frequency issues)
- Explore higher retentions (rule of thumb is 1% of gross revenues)
- Do not move insurers without a compelling reason and without polling attorneys about claims
- Purchase adequate limits

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Conclusion

- Questions?
- Thank you for your time and attention!
- Please contact me as follows:
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